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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LSC/2015/0007**
Property	:	**Basement and Ground floor flat, 10 Norfolk Terrace Brighton East Sussex BN3 1TL**
Applicant	:	**10 Norfolk Terrace Brighton (Freehold) Ltd**
Applicant's Representative	:	**Ms P McGeowan for Homemade Management**
Respondent	:	**Mr J Tilley , tenant**
Respondents' representative	:	**Did not attend and was not represented**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr R Wilkey FRICS**
Date and venue of hearing	:	**14 July 2015** **Brighton**
Date of Decision	:	**16 July 2015**

DECISION

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1 The Tribunal declares that the Applicant's service charges for the service charge year 2014 (including major works) and proposed charges, including for major works, for the service charge year 2015 are reasonable.

2 The Respondent is liable to pay 25% of the total charge for each year.

3 No order is made for costs but the Tribunal orders reimbursement of the Applicant's application fee of £125 and hearing fee of £190 (total £315).

REASONS

1 The Applicant is the landlord of the property situate and known as 10 Norfolk Terrace Brighton East Sussex BN3 1TL (the building) which is currently divided into seven flats and the Respondent is the tenant of the Flat occupying the basement and ground floors of the building (the property).

2 The Applicant issued an application in the Tribunal on 28 January 2015 asking the Tribunal to make a declaration under s27A Landlord and Tenant Act 1985 as to the reasonableness or otherwise of the Applicant landlord's service charges, including charges for major works, for the service charge year 2014 and the proposed service charges, including sums for major works, for the current service charge year 2015. By Clause 1 of the lease under which the Respondent tenant holds the property (dated 10 March 1995 (page 242) as varied by an Overriding lease dated 29 January 2014 (page 263)) the tenant covenants to pay 25% of the total service charge including the costs of insurance, incurred by the landlord in maintaining the structure exterior and common parts of the building.

3 Directions were issued by the Tribunal on 13 March 2015.

4 The matter came before a Tribunal sitting in Brighton on 14 July 2015. The Applicant was represented by Ms P McGeowan, solicitor and the Tribunal heard oral evidence from Mr O'Donnell of Homemade Management who manages the property on the landlord's behalf. The Respondent, Mr Tilley, did not attend the hearing and was not represented at it. The date of the inspection and hearing were arranged with and agreed by Mr Tilley. The Tribunal is satisfied that he was aware of the inspection and hearing and of his right to attend the same.

5 The Applicant's claim is based on s27 Landlord and Tenant Act 1985, relating to the payability of and reasonableness of service charges as between landlord and tenant. Such a matter falls within the jurisdiction of the tribunal.

6 A bundle of documents was placed before the Tribunal for its consideration. This had been prepared by the Applicant and a copy was served on the Respondent by registered mail on 22 May 2015 (Applicant's letter to the Tribunal dated 22 May 2015). The Respondent's letter dated 19 May 2015 addressed to the Applicant, a copy of which was forwarded to the Tribunal by the Applicant on 23 May 2015, was not admitted in evidence. The Tribunal accepted the Applicant's evidence that they had not received that letter until after the 20 May 2015 deadline imposed by Direction 9. The letter did not form part of the bundle prepared by the Applicant who made an application to exclude it from the evidence before the Tribunal on the grounds that it had not been served in time and they had not been accorded an opportunity to respond to it. As noted above, the Tribunal accepted the Applicant's evidence in this respect and declined to admit the Respondent's letter of 19 May 2015 into evidence. Page references in this document are to pages in the bundle.

7 The Tribunal inspected the building immediately before the hearing. The inspection was attended by Ms McGeowan and Mr O'Donnell for the

Applicant but the Respondent did not attend. The Tribunal clerk rang the doorbell of the Respondent's flat which was answered by a young man who said that the Respondent was not at home. The Tribunal was therefore unable to gain access to the Respondent's flat or to the rear garden from which it had hoped to be able to view the state of the rear façade of the building which had been the subject of works and further works in that area had been planned. The building is an early Victorian mid-terrace house spread over a basement and four upper floors situated in a quiet residential street close to the sea front and all local amenities. Limited paid and residents on-street parking is available in the vicinity. The exterior of the building is rendered with the façade facing the street having recently been re-painted. The building is currently divided into seven self-contained units. The Respondent has a long lease of the basement and ground floors which, together with the rear garden, comprise the biggest single unit in the building. The remainder comprises six studio flats , there being two flats on each of the upper floors of the building. The Respondent has a doorway to his flat via an external staircase leading from the street to the basement but also has an entrance on the ground floor of the building accessed via the front entrance steps and main front door both of which are in reasonable condition. The interior common parts of the building are however in a very poor and uncared for state with bare floorboards in the common hallway, exposed wiring, missing light bulbs, broken bannister rails and a general aura of neglect. The Tribunal was afforded access to a flat at the rear of the top floor in order to view the exterior of the building from the windows of that flat. Very little of the exterior was in fact visible from that angle.

8 The Applicant had acquired the freehold of the building in early 2014 and had appointed Mr O'Donnell's company to manage it for them. Estimates, accounts, receipts, notices and demands were only available from February 2014 when Homemade Management took over. From that time onwards the Respondent had failed to make payment in response to the service charge demands sent to him.

9 The Respondent's schedule of disputed items (pp29 and 30) only gives generic reasons for his objections and does not specify in detail why he feels the charge in dispute is unjustified. His general comment is that each of the charges is 'unreasonably high' but he has not supported that by any reasoning or evidence eg of alternative quotations. He has not provided a written statement to the Tribunal to explain his case and was not present at the Tribunal hearing. He has not therefore supplied the Applicant or the Tribunal with sufficient evidence to support his defence to the Applicant's application.

10 The Tribunal asked the Applicant to provide evidence to the Tribunal of the expenditure comprised in their demands and to demonstrate that in respect of major works they had complied with s 20 Landlord and Tenant Act 1985 and that the demands served on the tenant complied both with the law and the requirements of the Respondent's lease.

11 In respect of each item in the accounts for the year 2014 (page 79) the Applicant produced and the Tribunal inspected the relevant estimates, invoices, receipts, notices and demands and was satisfied that the relevant expenses had been properly incurred, the standard of the work involved was reasonable and that the correct notices/demands had been correctly served on the Respondent in respect of requests for payment. The Tribunal noted that the Applicant was charging £175 (no VAT applicable) per unit as a management fee which it considers to be within the range of normal management fees charged by managing agents carrying out similar work in

the Brighton area. Similar comments apply to the 7.5% project management fee charged for the major works contract. In respect of the major works the Tribunal is satisfied that the Applicant had sought three independent estimates, and that the Respondent had been given an opportunity to express his views on the contents of the s20 notice and estimates served on him and had failed to do so.

12 A similar procedure was adopted by the Tribunal in respect of the estimated figures for the service charge year 2015 where the actual sums due will not be known until the end of the accounting period. The necessity for further major works affecting the interior common parts of the building was evident from the Tribunal's inspection and it accepts the Applicant's evidence that the exterior of the rear face of the building is also in need of repair and redecoration. A s20 notice has already been served on the tenants in respect of the proposed major works (page 167 contains the specification) and the Applicant said that estimates had been served on June 15 2015, after the hearing bundle had been served. The Tribunal accepts that a fire inspection and asbestos survey would both be required in the current year. It also noted that the Applicant stated that the estimates obtained for the proposed major works exceeded the anticipated expenditure of £18,000. Overall, the Tribunal considers that the estimated proposed expenditure for service charge year 2015 appears to be reasonable.

13 An order for costs under Rule 13 of the Tribunal Rules of procedure was requested by the Applicant. In support of that application the Applicant stated that the Respondent had failed to comply with the Tribunal's Directions, had not provided a proper defence to the substantive application and had put the Applicant to expense in preparing the case for a hearing before the Tribunal. The Applicant also requested reimbursement of the application and hearing fees.

14 Having considered the Applicant' application for costs the Tribunal declines to make such an order but does make an order for reimbursement of the Applicant's application fee in the sum of £125 and hearing fee in the sum of £190. An order under Rule 13 can only be made where the offending party's behaviour is unreasonable. Merely failing to provide a proper response or failure to comply timeously with directions is insufficient to satisfy the requirements of the Rule.

15 **The Law**

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Orders for costs, reimbursement of fees and interest on costs

Rule 13 The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in— (i) an agricultural land and drainage case,

(ii) a residential property case, or (iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

Judge F J Silverman as Chairman
Date 16 July 2015

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.